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National Association of Federally-Insured Credit Unions

October 3, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Supervisory Use of Artificial Intelligence

Dear Director Chopra:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to encourage greater transparency regarding the use of artificial intelligence (AI) and machine learning (ML) by the Consumer Financial Protection Bureau (CFPB). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 138 million consumers with personal and small business financial service products. As noted in your prior speeches, the absence of explainable parameters or outputs in AI models can contribute to unfairness. While the CFPB's work has focused on how this unfairness might impact consumers, it is equally important that regulatory use of AI and ML follow similar standards of transparency and accountability.

The CFPB's FY 2023 Annual Performance Report states that the CFPB continues "to assess sources and capabilities that will provide an enhanced data-driven approach to its areas of supervisory focus."¹ The report provides the specific insight that the CFPB is now "[I]everaging additional data sources as well as artificial intelligence within the supervisory prioritization process."² To date, the CFPB has shared very little information about its use of AI to perform supervisory prioritization.

Some important information regarding AI/ML projects comes not from the CFPB itself, but from vendors selected to perform data analysis contracts. For example, a press release from one company describes a "Data Analytics Blank Purchase Agreement" covering "machine learning, and natural language processing support."³ However, the CFPB has never disclosed where ML or natural language processing support may be applied. One potential domain is the CFPB's consumer complaint database, where it is unlikely that manual analysis is feasible.⁴ Yet the CFPB

¹ CFPB, FY 2023 Annual Performance Report, 85 (February 2023)

² *Id.*

³ Analytica, CFPB Data Analytics BPA Prime Award (October 20, 2022), available at <https://www.analytica.net/press-release/cfpb-data-analytics-bpa-prime-award/>

⁴ See Tom Sabo, SAS Institute Inc., "Applying Text Analytics and Machine Learning to Assess Consumer

does not state conspicuously whether AI/ML techniques are used in conjunction with complaint analysis. The opaque application of novel analytics to complaints which are, by the CFPB's own admission, not screened for factual accuracy, raises concerns about fairness and transparency.

The CFPB's contracting activity for data analytics services often obscures the agency's potential use of AI and ML technologies. For example, a contract that started on September 15, 2020 for complaint data analytics called for "applications to enhance CFPB capability to handle increasing volumes of complaints."⁵ The CFPB's potential use of AI/ML techniques to assist supervisory prioritization should not be relegated to the fine print of federal contracts. Instead, NAFCU asks that the CFPB follow its own advice for financial institutions by ensuring that complex algorithms and models employed by the agency do not operate as black boxes.

The CFPB should disclose on its website all AI/ML applications, services, and contracts that might bear upon the agency's supervisory work or rulemaking activity. Accompanying these disclosures should be a description of each AI/ML model, its purpose, and a reasonably specific explanation of the inputs used and outputs generated. Credit unions and other regulated financial institutions deserve to know how they are being assessed for potential violations of federal consumer financial law. Opaque algorithms that dictate supervisory focus be subject to the same level of transparency as other supervision and enforcement functions.

Notwithstanding potential use of AI or ML models, the CFPB should also invite consideration of how it can make its risk-based prioritization process more transparent. To the extent the CFPB has access to institution-specific early warning information, similar to the spikes and trends reports generated from consumer complaint analysis, the agency should be willing to share that data. Institutions should be afforded the opportunity to independently assess data that might inform future exam scope as early as possible. This would allow institutions to course correct prior to examination and would also afford an opportunity to explain data trends that might be perceived as problematic.

The CFPB's substantial investments in data analytics to support supervisory work can benefit more than just the agency's frontline staff. The CFPB should embrace transparency, share data that it collects in real time, and offer more substantial insights about the techniques and technologies that are behind its exam prioritization process. Where the use of AI and ML algorithms are present, the CFPB should commit itself to the same standards of explainability that it expects from regulated financial institutions. Doing so will help ensure that financial institutions are fairly apprised of supervisory intentions and given an opportunity to correct misinterpretations of data or trends.

Financial Complaints" (2017), available at <https://support.sas.com/resources/papers/proceedings17/SAS0282-2017.pdf>

⁵ BPA Call 9531CB20A0001-9531CB20F0084, https://www.highergov.com/contract/9531CB20A0001-9531CB20F0084/#activity_timeline

Consumer Financial Protection Bureau

October 3, 2023

Page 3 of 3

Conclusion

NAFCU appreciates your interest in ensuring that use of AI and ML meets standards for fairness and transparency. We hope that these expectations will extend to the CFPB's own use of such technology and guide future improvements in supervision. If you have any questions, please do not hesitate to contact me at 703-842-2266 or amorris@nafcu.org.

Sincerely,

A handwritten signature in black ink that reads "Andrew Morris". The signature is written in a cursive style with a long, sweeping underline.

Andrew Morris

Senior Counsel for Research and Policy